IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1714 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKORLAL CHUNILAL TILVAWALA

Versus

STATE OF GUJARAT

Appearance:

MR NM KAPADIA for Petitioner

MR SP HASURKAR and MR PK SHUKLA for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 11/04/2000

ORAL JUDGEMENT

1. Mr. N.M. Kapadia for the petitioner. Mr. S.P. Hasurkar and Mr. P.K. Shukla, learned Additional Government Pleader and Assistant Government Pleader for the State of Gujarat. The petitioner herein namely, Shri Thakorlal Chunilal Tilvawala, aged 74 years, has filed

the present Special Civil Application for grant of pension to him from the discretionary fund of the respondent State under Swatantra Senani Sanman Pension Scheme from the date of his application with penal interest at the rate of 24% per annum from the date of entitlement till the date of payment of arrears alongwith special exemplary compensation and cost.

2. The petitioner has come with the case that he took active part in Quit India Movement 1942 by distributing materials against the then British Government and also participated in related activities. It is also stated that a warrant of arrest came to be issued against him at that time and in order to evade the same he had to remain underground for some period between 9th August, 1942 to December, 1945. For the first time he moved an application for the grant of aforesaid pension on 9th August, 1990. He also produced a Certificate dated 26th May, 1991 from a freedom fighter Dwarkadas Bapubhai Patel and yet another certificate dated 13th July, 1991 from a freedom fighter Tribhuvandas Patel who had remained in jail for a period over 2 years. The petitioner has submitted that these documents were submitted by him vide his letter dated 15th July, 1991. He then referred to a letter dated 13th December, 1991 sent to him by the Collector, Ahmedabad to apply in the form annexed as 'I'. The petitioner had already written letters dated 7th August, 1991 to the Police Commissioner, Ahmedabad and the Superintendent of Central Jail mentioning therein that he was required to produce the warrants of arrest which may have been issued against him during the period of 9th August, 1942 to 1945 although he had not been arrested. By his letter dated 19th August, 1991 sent to the Collector, he informed him (the Collector) that the required documents must have been received by him (the Collector) and filing of no more documents is necessary. In his letter dated 19th August, 1991, he has also referred to the copies of certificates issued by Tribhuvandas Ranchod and Manubhai Motibhai Patel etc. The petitioner then received a letter dated 16th March, 1992 from the Collector, Ahmedabad informing him that the petitioner is not entitled to get any pension out of the discretionary fund

of the Government and his request was declined. The petitioner again moved an application dated 20th December, 1993 to the Collector setting out therein the names of other freedom fighters who had filed certificates in Annexure I form and submitted that the same may be treated for the purpose of his case also. A Certificate dated 16th December, 1993 issued by Kantilal Ambalal Subodh was also filed. However, the District Collector, Ahmedabad again conveyed to the petitioner that his application had already been rejected on 16th March, 1992.

3. The petitioner then moved an application dated 12th February, 1994 before the Education and Home Department reiterating his request and moved yet another application before the Collector, Ahmedabad. On 20th September, 1997 the petitioner was asked that in case he

was present at the Cultural Programme on the eve of Golden Jubilee of Indian Independence and in case he had been granted the gold medal and the shawl etc., he may produce the details thereof before the Collector latest by 24th September, 1997. The petitioner has then referred to a certificate issued by All Gujarat Underground Swatantra Senani Sangh certifying that the petitioner had worked as an underground worker in the freedom struggle and is certified to be a freedom fighter. This document bears the date of 24th May, 1998. The petitioner has also enclosed a copy of the Abhivadan Patra dated 15th August, 1999 issued under the signature of the Chief Minister of the State of Gujarat. According to the petitioner, the contents of this Abhivadan Patra are sufficient to prove the petitioner to be a freedom fighter. A copy of the Identity Card issued by the Resident Deputy Collector, Ahmedabad with the photograph of the petitioner has also been annexed as issued by the Collector, Ahmedabad certifying the petitioner to be a freedom fighter. A copy of the invitation sent by the Raj Bhawan inviting him to the function on 15th August, 1999 as a freedom fighter has also been enclosed. It appears that the State Government has now firmly found that the petitioner was entitled to the Freedom Fighters' Pension for which he had applied way back on 9th August, 1990 and accordingly, the order dated 4th August, 1999 has been issued by the General Administration Department of the Government of Gujarat granting him monthly pension of Rs.1,500/- with effect from 01.08.1999.

4. The petitioner has filed this petition with the grievance that he is entitled to get pension from the date of his application i.e. 9th August, 1990 and the respondents be directed accordingly. This Special Civil Application was filed before this court on 16th March, 2000. When the matter came up before this court on 22nd March, 2000, Rule returnable on 5th April, 2000 was issued. However on 5th April, 2000 time was sought by the respondents and the matter was made to stand over to 11th April, 2000. No reply has been filed so far. Mr. S.P. Hasurkar, learned Additional Government Pleader still made a prayer for further time to file the reply. In such like matters when a freedom fighter and a senior citizen is pursuing his claim for pension right from 1990 and the matter has already remained in correspondence with the Government for a period over 9 years by now, this court did not find it to be a fit case for grant of further time and the learned Additional Government Pleader was asked to argue the matter with the assistance of his officers present in the court with the records. Mr. Hasurkar read out from his papers that the petitioner had admitted that he had not been arrested during the course of freedom struggle and that no warrants of arrest had been issued against him. With regard to the certificates produced by the petitioner from the freedom fighters who had remained in jail for a period over 2 years Mr. Hasurkar has submitted that the petitioner has not produced the proof that those freedom fighters who had given certificates to the petitioner had remained in jail for 2 years. He has submitted that the pension has been granted from 1st August, 1999 and he is not entitled to get this pension from the date of his application because earlier his applications had been rejected and the Government has now taken a decision in his favour in 1999 only.

5. I have considered the submissions made on behalf of both the sides. It is not at all convincing that the petitioner was under any obligation to produce the proof about remaining in jail for a period over 2 years in respect of those who had given certificates to him as freedom fighters. After all the records were with the respondents and they could have verified it as to whether the persons who had given certificates in favour of the petitioner had themselves remained in jail for 2 years or not. The petitioner could not be expected to collect the records in that regard. Even with regard to the

petitioner himself he made all efforts which he could do by applying before the Police Commissioner and the Jail Superintendent to supply him copies of warrants of arrest, if any, issued against him during 1942 to 1945 when the petitioner had to remain underground. Whether such warrants of arrest had been issued against him or not and as to whether what was the exact nature of his activities in the freedom struggle apart from distributing the materials, participating in Prabhat Pheries and evening meetings etc. and all other requirements to which the learned Additional Government

Pleader, Mr. Hasurkar has referred have lost importance now for the simple reason that the Government itself has recognised the petitioner as a freedom fighter and not only that, the Freedom Fighters Identity Card and Abhivadan Patra have been issued to him, he has also been felicitated at the Government level by the Government of Gujarat and in token thereof the documents have been issued under the signatures of Chief Minister namely, Shri Keshubhai Patel on 15th August, 1999 from which it stands established that the petitioner is a freedom fighter. He has not become a freedom fighter overnight in 1999. If he is a freedom fighter, he was a freedom fighter before Independence and merely because his applications were rejected in 1992 and thereafter by the Collector and merely because the Government has recognised him as a freedom fighter only now in the year 1999, it cannot be said that the petitioner is not entitled to the pension as a freedom fighter out of the discretionary fund of the Government of Gujarat from the date of his application. The entitlement of such pension of a freedom fighter from the date of his application cannot be made to depend upon the date on which the Government takes a decision to grant such pension. The Government has taken such a decision with regard to the petitioner after 9 years of his making the application when the petitioner has already attained the age of 74 years. Had such decision been taken after few more years, we cannot say whether the petitioner himself during his lifetime would have been able to get the

advantage of this pension or not. It is a dismal fact that when such freedom fighters demand for a token amount of pension for the services rendered by them to the nation on the basis of their participation in the freedom struggle - such applications are scrutinised with the

meticulous details and weighed in a golden scale and while doing so, it is forgotten and put in oblivion that these are the persons who have made sacrifices for the cause of nation and at the altar of their personal comforts and the careers which they could have otherwise made for themselves. While we have reached the ultimate destination and the goal and the object of the freedom, the milestones of that long journey of freedom struggle cannot be forgotten and if at all we mean to acknowledge the contribution of such freedom fighters - the grant of such meagre amounts as a token in the form of pension etc. is in fact no substitute for such sacrifices. Besides the fact that it is a very small recognition, the pension in such cases should be given to them with grace and honour. It is unfortunate that even such persons have to litigate for the purpose of getting the pension and it may be made very clear that the entitlement of such pension is not at all fortuitous and therefore it may not be made to correspond with the date on which the Government takes a decision. In this case, only 9 years have been taken to recognise the petitioner's right to get the pension as a freedom fighter. The Government may take 10 years, 15 years, 20 years or even more in taking a decision and therefore, the date from which the freedom

fighter must get the pension has no relevance or nexus to the date on which the Government takes a decision. The relevant date in this regard is the date on which the application is moved irrespective of the date on which the application is accepted and the pension is granted. Learned counsel for the petitioner, Mr. Kapadia has referred to a decision of the Supreme Court in this regard in the case of Mukund Lal Bhandari and Ors. vs. Union of India, reported in AIR 1993 SC 2127, wherein it has been observed by the Supreme court that the right to receive pension in case of a freedom fighter has to be accepted irrespective of the date of application and irrespective of whether the same is accompanied by requisite eligibility data. There is no limitation for making such claim and the entitlement to receive such pension has to be from the date of the application, the only rider is that the pension would flow from the date of the application, not from any date earlier thereto. The Supreme Court has expressed the view that neither the date of application nor the date on which the required proof is furnished should make any difference to the entitlement of the benefit under the Scheme and therefore, once the application is made, even if it is unaccompanied by requisite eligibility data, the date on

which it is made should be accepted as the date of the preferment of the claim whatever be the date on which the proof of eligibility is furnished. Such benefits should be made available in respect of pension and the benefit is to be given at least from the date on which the

application is filed if not from the date the Scheme comes into force.

6. The upshot of the aforesaid discussion is that this Special Civil Application succeeds. The respondent, State of Gujarat and its concerned functionaries are directed to award the Freedom Fighters' Pension to the petitioner from 9th August, 1990 instead of 1st August, 1999 for lifetime and the order dated 4th August, 1999 shall be revised accordingly and the petitioner shall be paid the due amount of the arrears of the pension from 9th August, 1990 i.e. the amount which he would have got had the pension been paid to him at the rate which had been operative on and from 9th August, 1990 upto date. In the facts and circumstances of the case, I do not find it to be a fit case for award of any interest or special compensation, as claimed by the petitioner. This Special Civil Application is therefore allowed in part and the Rule is also made absolute accordingly. No order as to costs. Mr. Hasurkar, learned Additional Government Pleader undertakes that the payment of the due arrears, as ordered by this court, shall be made available to the petitioner within a period of 2 months from today and accordingly, the amount shall reach the hands of the petitioner within the aforesaid period. Direct Service is permitted.

(M.R. Calla, J.)

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